BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JOHNNIE MEYERING	:	
	:	**HEARING NUMBER:** 13B-UI-06347
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
HARRISON TRUCK CENTERS	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES and REMANDS** as set forth below.

FINDINGS OF FACT:

The Claimant, Johnnie Meyering, worked for Harrison Truck Centers from July 30, 2007 through May 6, 2013 as a full-time diesel mechanic. (21:14; 15:30; 12:12-11:55) The Claimant suffered a hand injury for which he was placed on restrictions. The Employer filed a workers' compensation claim on August 30, 2012 that was later denied, and Mr. Meyering was placed on short-term disability to have surgery on his left hand. (20:00-19:04) His last day of full-time work prior to the restrictions was September 30, 2012. (11:42-11:30)

The Claimant had surgery on January 3, 2013 for which he later presented the Employer with permanent restrictions on May 1, 2013 that prevented him from being able to perform his job. (22:58-22:40; 20:35; 13:46-13:10, 8:20) The restrictions specifically prohibited him from using air tools, using his hand as a hammer, and the prolonged gripping of either hand for more than a minute interval. (22:22-21:22; 9:47-8:58)

It is disputed whether this injury was work-related or not. (20:06-19:12) The Claimant repeatedly requested about work he could do, i.e., simple services, oil changes, inter alia. (7:28, 6:57-6:26), but the Employer was unable to find work within the Claimant's restrictions. Mr. Meyering was subsequently placed on short-term disability. On March 30, 2013, the Claimant texted the Employer suggesting that the Employer may have to terminate him since he had not yet been released and Employer had no work available for him. (18:14-16:50; 12:56-12:40; 8:15-7:45; 2:50) On May 6, 2013, Chad Harrison (the Owner) told the Claimant that he was fired by handing him a termination letter dated May 6, 2013. (23:52-23:02; 14:53-14:31)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.32(4) provides:

> *Report required*. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The record shows that the Claimant was unable to continue the job for which he was hired because of a hand injury he sustained that resulted in permanent restrictions. It is evident he wished to continued his employment relationship based on his repeated requests for alternative work, but the Employer had no work within his restrictions. His March 30th text was not, in essence, a intent-to-quit or resignation letter; rather, it was merely an acknowledgement that he hadn't yet received a release to return to work and expected that the Employer may have to let him go. Even the Employer testified that they, both Chad Harrison and Tracy Novak, presented him with a May 6th, 2013 letter 'firing' him because of his inability to return to work. (24:00-23:20)

871 IAC 24.1(113) provides:

> *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> *a. Layoffs.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
>
> *b. Quits.* A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
>
> *c. Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

"[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885, 887 (Iowa App. 1990), accord Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992). The Employer's argument that Mr. Meyering quit fails because the record lacks the prerequisite elements to consider this separation a quit. And even if we were to consider this a quit, then would we not consider his separation as being March 30th when he actually texted the Employer? If so, why was it necessary for the Employer to issue a termination letter more than a month later (May 6, 2013) if he had already quit?

Based on this record, it is clear the Employer initiated the Claimant's separation from employment. And while the Employer asserts that he was fired (23:52-23:02) "…because he had an injury that couldn't allow him to work in his present condition…" (23:09), injury or illness is not misconduct. The burden is on the employer to establish that the Claimant committed job-related misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The Employer has offered no evidence to substantiate that the Claimant's inability to perform his job was intentional, repeated negligence or, in any way, a blatant disregard of the Employer's interests. See, 871 24.32(1)"a".

As for why the Claimant didn't return to offer his services, the court in Porazil v. Jackman Corporation, August 27, 2003, Court of Appeals Unpublished Case No. 3-408/02-1583 held that a claimant who is terminated prior to a return from a leave of absence is not obligated to return to the employer to offer services after the expiration of the leave of absence. The rationale being that the claimant no longer has an employment relationship to which the claimant can return.

Lastly, the Claimant presented testimony as to the types of jobs he could perform. However, the administrative law judge made no ruling on whether the Claimant was able and available for work in the general workforce, which was a noticed issue.

DECISION:

The administrative law judge's decision dated July 16, 2013 is **REVERSED and REMANDED** for a determination of the able and available issue. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Monique F. Kuester

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Cloyd (Robby) Robinson

AMG/fnv